

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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Rockville, Maryland 20850  
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<http://www.montgomerycountymd.gov/boa/>**

**CASE NO. A-6522  
PETITION OF LARRY J. CREWS**

**OPINION OF THE BOARD  
(Opinion Adopted June 21, 2017)  
(Effective Date of Opinion: July 3, 2017)**

Case No. A-6522 is an application for a variance to allow two accessory structures (canopy sheds) to exceed the maximum footprint allowed in the RE-1 zone for such structures. Section 59-4.4.6.B.2.d of the Zoning Ordinance limits the maximum footprint of an accessory building on a lot where the main building is a detached house to 50% of the footprint of the main building or 600 square feet, whichever is greater.

The Board of Appeals held a hearing on the application on June 21, 2017. Petitioner Larry J. Crews appeared pro se at the hearing in support of the application. Mary Hemingway and Hilary Jackson appeared in opposition.

Decision of the Board:                      Variance **DENIED**.

**EVIDENCE PRESENTED**

1. The subject property is Lot 8, Block B, 0001 Subdivision located at 812 Snider Lane, Silver Spring, Maryland, 20905, in the RE-1 Zone.
2. The Justification Statement submitted with the variance application describes the subject property as a "long, narrow, RE-1, 106.5' x 279', two thirds acre" lot having 29,714 square feet. See Exhibit 3. The Zoning Vicinity Map shows that this rectangular property is one of a dozen similar properties located along the north side of Snider Lane. See Exhibit 7.
3. The Petitioner is proposing to locate two 10 foot x 20 foot canopy sheds on his property. His Justification Statement asserts that in its November 17, 2016, denial of his building permit application for these sheds, DPS erroneously interpreted Section 59-4.4.6.B.2.d of the Zoning Ordinance to impose a cumulative limit on the footprint of all accessory buildings on a lot, rather than interpreting that section to impose a limit on the footprint size of each accessory building on the lot. He points to the use of the singular

“an accessory building” in Section 59-4.4.6.B.2.d, and to the 15% lot coverage limitation found in Section 59-4.4.6.B.1 in support of his argument. See Exhibit 3.

4. Other than stating that the subject property is long and narrow, the Petitioner's Justification Statement does not address the “Necessary Findings” set forth in Section 59-7.3.2.E of the Zoning Ordinance, which must be satisfied for the Board to grant a variance. Indeed, the Justification Statement appears to acknowledge this, stating “... I'm NOT asking the Board of Appeals to approve a 'variance' from requirements of the applicable RE-1 zoning requirements for my property. Rather I am pointing out that the specific wording of the zoning code at issue here, itself demands a reversal of DPS's denial of my application for a shed permit.” See Exhibit 3.

5. At the hearing, the Petitioner was asked by the Board whether his property met any of the factors in Section 59-7.3.2.E.2.a of the Zoning Ordinance, the first element of the variance test. Mr. Crews testified after being asked individually about each of the five factors under that Section that his property did not meet any of those factors.

## FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the requested variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-7.3.2.E.

1. *Section 59-7.3.2.E.2 - each of the following apply:*

*Section 59-7.3.2.E.2.a - one or more of the following unusual or extraordinary situations or conditions exist:*

*Section 59-7.3.2.E.2.a.i - exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;*

The Justification Statement describes the subject property as long and narrow. The Board finds, based on the Zoning Vicinity Map, that while the subject property is a relatively long and narrow rectangle, this shape is shared with the eleven properties flanking the subject property, and thus is not an unusual or extraordinary condition peculiar to this property. The Board further finds that the Petitioner testified at the hearing that his property does not satisfy this criterion.

*Section 59-7.3.2.E.2.a.ii - the proposed development uses an existing legal nonconforming property or structure;*

*Section 59-7.3.2.E.2.a.iii - the proposed development contains environmentally sensitive features or buffers;*

*Section 59-7.3.2.E.2.a.iv - the proposed development contains a historically significant property or structure;*

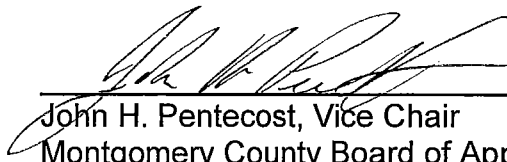
*Section 59-7.3.2.E.2.a.v - the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;*

The Board finds that the Petitioner testified at the hearing that his property does not satisfy the criteria under Sections 59-7.3.2.E.2.a(ii) – (v).

The Board finds at this point that the Petitioner has presented no argument and no evidence to support a finding that the subject property and/or proposed construction meets Section 59-7.3.2.E.2.a of the Zoning Ordinance, having chosen instead to challenge DPS's interpretation of the Zoning Ordinance, something which is outside of the scope of this proceeding. Having found based on the Petitioner's own admission that the application fails to meet Section 59-7.3.2.E.2.a. of the Zoning Ordinance, the Board finds that it need not address the remaining variance criteria, and that the variance must be denied.

On a motion by Bruce Goldensohn, seconded by Edwin S. Rosado, with John H. Pentecost, Vice Chair, and Stanley B. Boyd in agreement, and with Carolyn J. Shawaker, Chair, necessarily absent, the Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

  
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John H. Pentecost, Vice Chair  
Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 3rd day of July, 2017.

  
\_\_\_\_\_  
Barbara Jay  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

